BEFORE

THE PUBLIC SERVICE COMMISSION

OF SOUTH CAROLINA

DOCKET NO. 2019-185-E

IN RE:	South Carolina Energy Freedom Act (H.3659) Proceeding to Establish Duke Energy Carolinas, LLC's Standard Offer, Avoided Cost Methodologies, Form Contract Power Purchase Agreements, Commitment to Sell Forms, and Any Other Terms or Conditions Necessary (Includes Small Power Producers as Defined in 16 United States Code 796, as Amended) - S.C. Code Ann. Section 58-41-20(A)	)))))))))))) **DIRECT TESTIMONY OF HAMILTON DAVIS ON BEHALF OF SOUTH CAROLINA SOLAR BUSINESS ALLIANCE**

I. INTRODUCTION AND PURPOSE OF TESTIMONY

Q. Please state your name and business address.

A. My name is Hamilton Davis, and my business address is 1519 King Street Extension, Charleston, SC 29405.

Q. Please provide your educational background.

A. I have a Bachelor of Science degree from Clemson University and a Juris Doctor degree from the University of South Carolina School of Law.

Q. Please describe your work and professional experience.

A. I currently serve as the Director of Regulatory Affairs for Southern Current, LLC where I manage the company's regulatory engagements before the Federal Energy Regulatory Commission and multiple state utility commissions, including the South Carolina Public Service Commission, the North Carolina Public Utilities Commission, the Georgia Public Service Commission and the Michigan Public Service Commission. My work also supports the company's policy initiatives before various state legislatures. Prior to my employment with Southern Current, I worked in business development on commercial and utility scale solar projects for Solbright Energy Solutions, LLC. I also served as the Energy & Climate Director for the South Carolina Coastal Conservation League where I was employed from 2006 – 2016. In that role I supported the advancement of a multitude of energy policy and regulatory issues at the state and federal level. While at the League, I was a registered South Carolina lobbyist and negotiated several comprehensive energy initiatives, including South Carolina's landmark solar legislation, Act 236. Since 2006, I have served on a variety of boards and committees focused on energy policy and regulation, including the Energy

Advisory Council for the South Carolina Public Utility Review Committee, the South Carolina Energy Office Advisory Committee, the South Carolina Clean Energy Business Alliance Board, the Georgia Distributed Generation Group Board, the South Carolina Offshore Wind Regulatory Task Force, and both the South Carolina Offshore Oil & Gas and Offshore Wind Legislative Study Committees.

Q. Have you previously appeared in a proceeding before the South Carolina Public Service Commission?

A. Yes. I have participated in multiple Allowable Ex Parte Briefings held before this Commission. My most recent appearance before this Commission was on behalf of the South Carolina Solar Business Alliance for an Allowable Ex Parte Briefing held on June 12, 2019.

Q. What is the purpose of your testimony?

A. My testimony begins with an overview of South Carolina Act No. 62 of 2019 ("Act 62" or "The Act") as it relates to these proceedings, including the Act's goals and the authority and direction given to this Commission therein. I then discuss the risks and incentives for utilities, solar developers, and ratepayers inherent in both the traditional cost of service utility business model and the solar business model enabled by the Public Utilities Regulatory Act of 1978 ("PURPA") and Act 62. Finally, I provide an overview of PURPA and its implications for energy production in South Carolina.

Q. How is your testimony organized?

A. My testimony is organized as follows:

I. Introduction and Purpose of Testimony

II. Act 62: An Overview

III. Risk and Incentives: Energy Production in South Carolina

IV. PURPA: Implications for South Carolina

II. ACT 62: AN OVERVIEW

Q. Were you directly involved in the drafting and negotiation of Act 62?

A. Yes. The South Carolina Solar Business Alliance ("SCSBA") was a leading proponent of Act 62 on behalf of the solar industry, and I represented the SCSBA during the process of negotiating and supporting the Act.

Q. Can you summarize the overarching goals of Act 62?

A. Yes. Act 62 is essentially a reset of utility regulation as it pertains to a range of issues related to the expansion of renewable energy generation and utility resource planning, and it provides this Commission with both increased direction and discretion in determining the most appropriate path forward for energy development in South Carolina. The Act makes clear that, in promoting South Carolina's policy of encouraging renewable energy, this Commission is directed to address all renewable energy issues in a fair and balanced manner that considers costs and benefits to all customers and establishes just and reasonable rates that reflect changes in the utility industry as a whole. Act 62 also recognizes and prioritizes increased competition and consumer choice within the state's electricity marketplace. The primary issues covered in the Act include avoided cost methodologies, commercially reasonable contract terms and conditions, customer-sited

generation, integrated resource planning, interconnection, community solar, commercial and industrial access to clean energy, integration of renewable energy, rate design, consumer protection, and increased Commission scrutiny of proposals for the construction of new major utility facilities.

Q. What general guidance did the legislature give to the Commission in implementing the provisions of Act 62?

A. Act 62 directs the Commission "to address all renewable energy issues in a fair and balanced manner, considering the costs and benefits to all customers of all programs and tariffs that relate to renewable energy and energy storage, both as part of the utility's power system and as direct investments by customers for their own energy needs and renewable goals." Section 58-41-05. The Commission must also ensure that utilities' rate designs "are just and reasonable and properly reflect changes in the industry as a whole, the benefits of customer renewable energy, energy efficiency, and demand response, as well as any utility or state-specific impacts unique to South Carolina[.]"

Specifically with respect to avoided cost, new S.C. Code Section 58-41-20 instructs that "any decisions by the commission shall be just and reasonable to the ratepayers of the electrical utility, in the public interest, consistent with PURPA and the Federal Energy Regulatory Commission's implementing regulations and orders, and nondiscriminatory to small power producers; and shall strive to reduce the risk placed on the using and consuming public."

Q. Does Act 62 indicate that the General Assembly intends for this Commission to take a "business as usual" approach to approving the utilities' avoided cost proposals?

A. No. Act 62 is a shift away from a "business as usual" regulatory approach, which primarily advantages the traditional utility business model, and towards an approach to regulatory oversight that prioritizes the expansion of renewable energy, consumer choice and protection, and increased competition from small power producers. It would be ironic if Duke was successful in using its avoided cost proposal to substantially impair the viability of solar deployment in South Carolina, when the purpose of Act 62 was to expand renewable energy in the state.

Q. What does Act 62 require of this Commission when setting avoided cost rates for South Carolina's investor owned utilities?

A. Act 62 requires that avoided cost rates be just and reasonable to ratepayers, addressed in a fair and balanced manner, and intended to reduce the risk placed on the using and consuming public. The Act also requires that this Commission place small power producers ("SPPs") on a fair and equal footing with utility owned generating resources. Just as when setting general utility rates, this Commission has discretion in establishing just and reasonable avoided cost rates based on the analysis and testimony of all parties to this proceeding. The Commission must also consider the implications of utility owned resources under a "business as usual" scenario, including the risks to customers associated with utility development and ownership of those resources.

Q. Does Act 62 incorporate PURPA implementation requirements from other states where Duke operates, such as North Carolina?

A. No. Act 62 establishes an independent PURPA implementation framework for South Carolina that is separate from the implementation of PURPA in other states, including

North Carolina. The Commission is not required to follow or incorporate requirements from North Carolina, including orders from the North Carolina Utilities Commission ("NCUC") or North Carolina legislation. Duke's avoided cost filings in this proceeding incorporate the NCUC's implementation of PURPA, including the use of the "peaker" methodology for establishing avoided energy and capacity rates, as well as prior avoided cost orders by the NCUC. Duke's filings also incorporate the requirements of North Carolina's House Bill 589, including limitations on the requirements of Duke to pay for avoided capacity. While the Commission may, of course, look to other states like North Carolina to the extent it is useful or instructive, Act 62 does not incorporate North Carolina's PURPA implementation and, instead, gives the Commission authority to establish South Carolina's implementation of PURPA within the parameters of Act 62.

Q. Is the Commission required to comply with the requirements of federal law?

A. Yes. Act 62 provides specifically that its decisions on avoided cost issues must be "consistent with PURPA and the Federal Energy Regulatory Commission's implementing regulations and orders," and that any power purchase agreements or other terms and conditions for QFs are commercially reasonable and consistent with PURPA and FERC's implementing regulations and orders. S.C. Code Ann. § 58-41-20(A), (B)(2).

III. RISK AND INCENTIVES: ENERGY PRODUCTION IN SOUTH CAROLINA

Q. Does Act 62 direct the Commission to reduce risk to ratepayers?

Yes. As I previously referenced, in making decisions with regard to avoided cost, the Commission must "strive to reduce the risk placed on the using and consuming public."

At the same time, the Commission's decisions must be just and reasonable, in the public interest, consistent with PURPA and FERC orders and regulations, and nondiscriminatory to small power producers.

Q. What kind of "risks" to ratepayers should the Commission consider?

A. Act 62 is not explicit in describing the kinds of risk this Commission should consider, but the SCSBA believes that a broad range of cost risk considerations are most pertinent to this docket. Duke witnesses focus narrowly and exclusively on the risk of overpayment to SPPs from inaccurate avoided energy rates that could leave ratepayers paying more for energy if avoided energy rates are overestimated for the term of a solar PPA. However, risks to ratepayers are not limited to inaccurate avoided energy rates and extend to utility development and ownership of other generating resources, against which SPPs provide a significant risk hedge.

Q. Do you agree with Mr. Brown's claim that current QF contracts will result in an "over-payment" by ratepayers of $2.26 billion?

A. No. While I acknowledge that avoided cost rates have declined since Duke entered into many of its current QF contracts, I think Mr. Brown's characterization of this a "$2.26 billion over-payment" is overblown and unfair, for a few reasons.

First, as Mr. Brown acknowledges, this "over-payment" figure represents the difference between Duke's current *projections* of avoided cost over the life of those PPAs (which have not been approved by this Commission), and the contracted value of those PPAs. Although Duke's avoided cost projections have declined since those PPAs were entered into, it is just as likely that avoided cost projections will rise in the future, as (for example)

natural gas prices rise, as they are ultimately expected to do. FERC relied on precisely this expectation when it established the basic requirement for long-term fixed-price PURPA PPAs, observing in Order No. 69 that "in the long run, 'overestimations' and 'underestimations' of avoided costs will balance out," leaving the ratepayer unharmed.[1]

Furthermore, as I explain below, Mr. Brown is drawing a false equivalence between this purported "over-payment risk" and the kind of risks that the construction of utility-owned generating units expose ratepayers to. The sole risk of fixed-price QF PPAs is that market conditions (primarily fuel prices) will change, such that those fixed rates will prove not to be as advantageous relative to other potential sources of energy. As I discuss below, the utility's construction of its own generation exposes ratepayers not only to these same market risk (only of *increasing* fuel prices), but also to the many additional risks inherent in planning, building, and owning generating units.

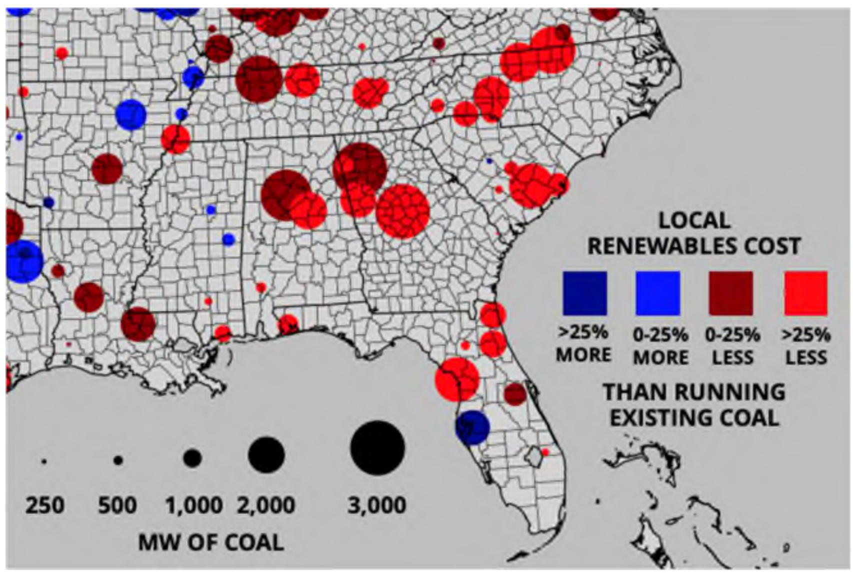
Q. What kind of risks are imposed on ratepayers when a utility builds its own generation, as opposed to purchasing energy or capacity from an SPP pursuant to a long-term contract?

A. There are differences in the type and magnitude of risk between utility-owned and SPP-owned generation resources. The primary "risk" to ratepayers from both PURPA and competitive solicitation regimes like Duke's Competitive Procurement of Renewable Energy program ("CPRE") relates to fixed energy payments. If energy costs go down over the course of a fixed PPA term, then customers could pay more for that energy than they otherwise would have paid. This is not unique to solar power purchase agreements

[1] FERC Order No. 69, FERC Stats. & Regs. ¶ 30,128 (1980) at 56.

(“PPAs”), however. Customers are similarly captive to the energy investment decisions made by utilities. The ratepayer is also exposed to fuel price risk. This is especially true today as it relates to uneconomic coal resources that can create sunk costs borne by ratepayers, but which generate power at a premium as compared to lower cost alternatives like solar.

Fig. 1: Uneconomic Coal Resources as Compared to Local Renewable Energy Costs[2]



A recent order from the North Carolina Utilities Commission is explicitly requiring Duke to conduct an analysis on early coal plant retirements for these very reasons:

> “To address the issue of economic retirement of aging coal plants, in the 2020 IRPs DEC and DEP shall include an analysis that removes any assumption that their coal-fired generating units will remain in the resource portfolio until they are fully depreciated. Instead, the utilities shall model the continued operation of these plants under least cost principles, including by way of competition with alternative new resources. In this exercise the

[2] Eric Gimon, Mike O’Boyle, Christopher T.M. Clack, Sara McKee, *The Coal Cost Crossover: Economic Viability of Existing Coal Compared to New Local Wind and Solar Resources*, 3 (March 2019), https://energyinnovation.org/wp-content/uploads/2019/03/Coal-Cost-Crossover_Energy-Innovation_VCE_FINAL.pdf

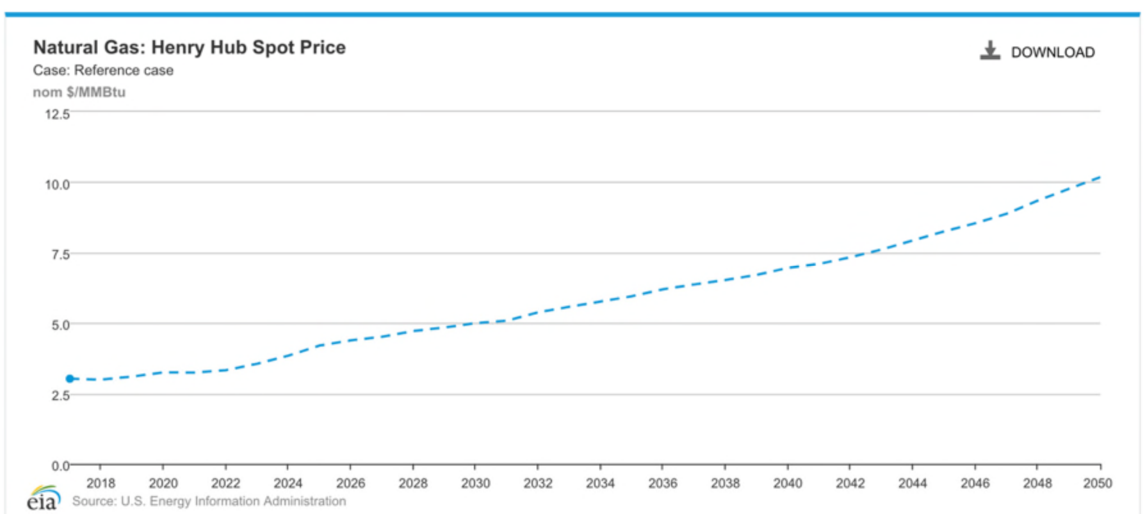
> full costs of disposal of coal combustion wastes shall be included in making any comparison with alternative resources. If such analysis concludes that continued operation of the utilities' existing coal-fired units until they are fully depreciated is the least cost resource alternative, then the utilities 2020 IRPs shall separately model an alternative scenario premised on advanced retirement of one or more of such units and shall include in that alternative scenario an analysis of the difference in cost from the base case and preferred case scenarios."[3]

Likewise, when natural gas prices rise, those increasing costs will be passed along directly to ratepayers. And while utilities may have some limited ability to shift dispatch from gas-fired to coal-fired resources, doing so could further expose customers to uneconomic coal generation. So, while fixed PPAs for solar and storage resources do create some cost risk for customers, they also provide a hedge against volatility and increases in fuel costs (*See Figs. 2 and 3 below illustrating recent volatility of natural gas prices and future projections*). This risk-hedge is especially valuable in an era of historically low natural gas prices, which are reflected in the avoided energy rates paid to SPPs and which lock in these low energy rates for the term of the PPA.

[3] Order Accepting Integrated Resource Plans and REPS Compliance Plans, Docket No. E-100, Sub 157, at 90 (State of N.C. Util. Comm'n. Aug. 27, 2019).

Fig. 2: Henry Hub Historical Natural Gas Prices[4]

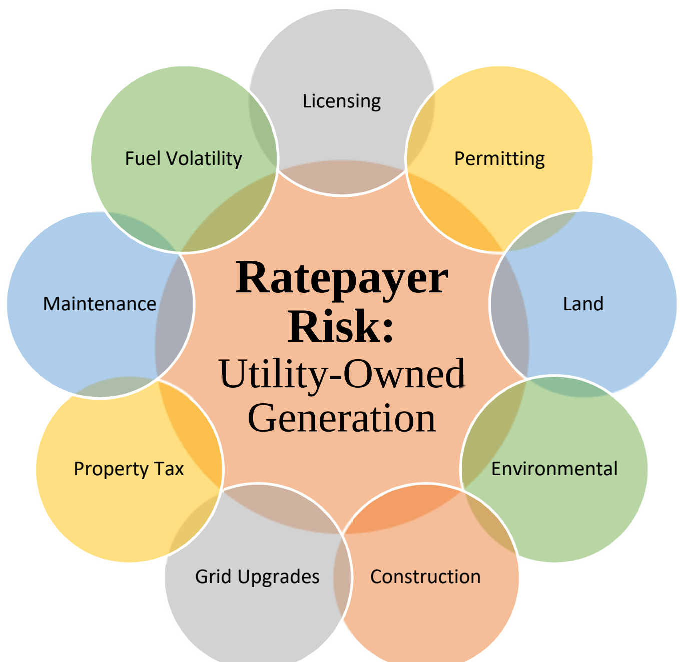
Fig. 3: U.S. EIA Natural Gas Price Projections (September 2019)



[4] Henry Hub Natural Gas Prices – Historical Chart, https://www.macrotrends.net/2478/natural-gas-prices-historical-chart

As illustrated by the chart below, there are many other risks to ratepayers that come along with utility-owned generation but that do not exist for SPP-owned generation, because those risks are borne by the SPPs rather than customers. In other words, when generation is owned by SPPs, customers are effectively shielded from these risks.

Fig. 4: Ratepayer Risk from Utility-Owned Generation



Q. Can you provide some real-world examples of these risks?

A. Yes. The most obvious recent examples involve the abandonment of the Lee and V.C. Summer nuclear units that left South Carolina ratepayers on the hook for billions of dollars. Similarly, there is also the risk that construction costs will exceed estimates, or the project will fail to deliver on time, or will deliver less power (or deliver it less reliably) than projected. There is additional risk that environmental costs will rise as new requirements (or new liabilities) arise. This type of risk is absent from PURPA contracts because they are performance-based. SPPs are only paid for the power and capacity actually delivered

to the grid, so, if a solar project is abandoned midstream like these nuclear units, it's the SPP that bears the cost and not the ratepayer.

Coal ash cleanup and accidents also expose customers to significant cost risk. Duke has estimated its coal ash related liability in the Carolinas to be somewhere between $5.6 and $10.6 billion dollars.[5] The Company has also maintained that coal ash cleanup costs come hand-in-hand with the operation of coal-fired power plants and should, therefore, be recovered through rates. Solar has no such waste-related issue, but even if it did, PURPA contracts provide no avenue by which those costs could be passed along to utility customers.

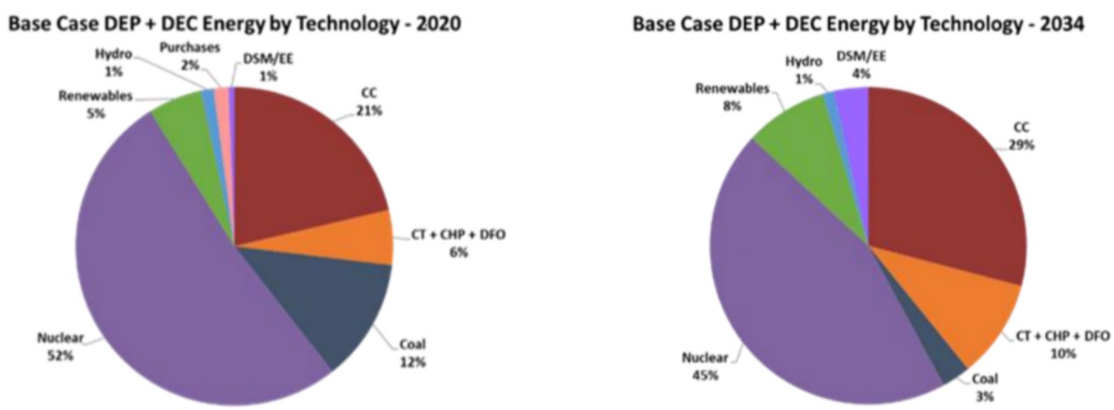
Duke's Edwardsport integrated gasification combined cycle ("IGCC") plant in Indiana is another notable example of substantial cost overrun for construction that has also resulted in excessive operations and maintenance costs, which have been borne primarily by the Company's customers in that state. Ultimately, the Edwardsport plant suffered from cost overruns of around $1.5 billion and is operating at an estimated cost of $145 per MWh.[6] The potential for these types of ratepayer boondoggles simply does not exist for PURPA contracts with SPPs.

Duke's own 2019 IRP update in North Carolina demonstrates the Company is continuing to heavily invest in natural gas generation.

[5] Bruce Henderson, NC House Democrats file bills to block Duke from passing coal ash costs to consumers, Charlotte Observer, April 5, 2019.

[6] https://www.powermag.com/duke-hit-hard-by-exorbitant-om-costs-at-edwardsport-igcc-facility/?printmode=1.

Fig. 5: DEC and DEP plan to build 12 GWs of new natural gas by 2034[7]



However, over-investment in gas generation puts customers at risk of future fuel cost volatility, particularly as the current low natural gas prices are driven largely by the widespread use of hydraulic fracking. Future regulations limiting fracking would likely lead to a significant increase in gas prices. Similarly, increased natural gas exports, potential CO2 pricing in the future, and additional state or federal environmental regulations could all impact natural gas prices. These are risks that Duke's ratepayers will bear with the planned investment in natural gas generation. Conversely, solar generation does not bring the same risk of future fuel price volatility, and if natural gas prices increase in the future relative to avoided cost rates, this could provide substantial savings to Duke and to ratepayers.

Q. Is the SC Solar Business Alliance ("SCSBA") incentivized to have avoided cost rates set as high as possible?

[7] Duke 2019 IRP, p.65

A. No. The SCSBA represents member companies that compete against each other, as well as utilities, and believes that avoided cost rates should be just and reasonable and should, to the extent possible, accurately reflect the costs being avoided by the utility. There is a finite amount of land in South Carolina suitable for solar development, and the capacity needs that SPPs can effectively displace on any utility's system is also finite. Arbitrarily high avoided cost rates can encourage market entry by power producers that could not otherwise compete in a lower cost environment. Competition should and does drive costs down over time, and this is to the benefit of ratepayers, as well as to SPPs that are able to effectively manage costs in a competitive, lower-cost environment.

Q. Is the SCSBA incentivized to have avoided cost rates set at a level that makes financing projects feasible?

A. Yes. SCSBA represents for-profit companies that have limited opportunities to effectively compete for market share within a utility's monopoly service territory. If avoided costs are set at a level that is not financeable, then there is no opportunity for SPPs to develop projects within that utility's service territory. Just as this Commission should consider the profit motive of investor owned utilities when evaluating any utility's proposed avoided cost methodology and rates, it should also consider the profit motive of SPPs. The Commission acts as a substitute for the free market in this instance by sending proper price signals to market participants. However, the SCSBA maintains that it has provided this Commission, through expert witness testimony, with a credible and reasonable analysis that justifies setting avoided cost rates at a level higher than that proposed by Duke Energy.

Q. Is Duke permitted to earn a rate of return on purchases of energy and capacity from QFs in the same way that it earns a rate of return on the capital costs of its own generation?

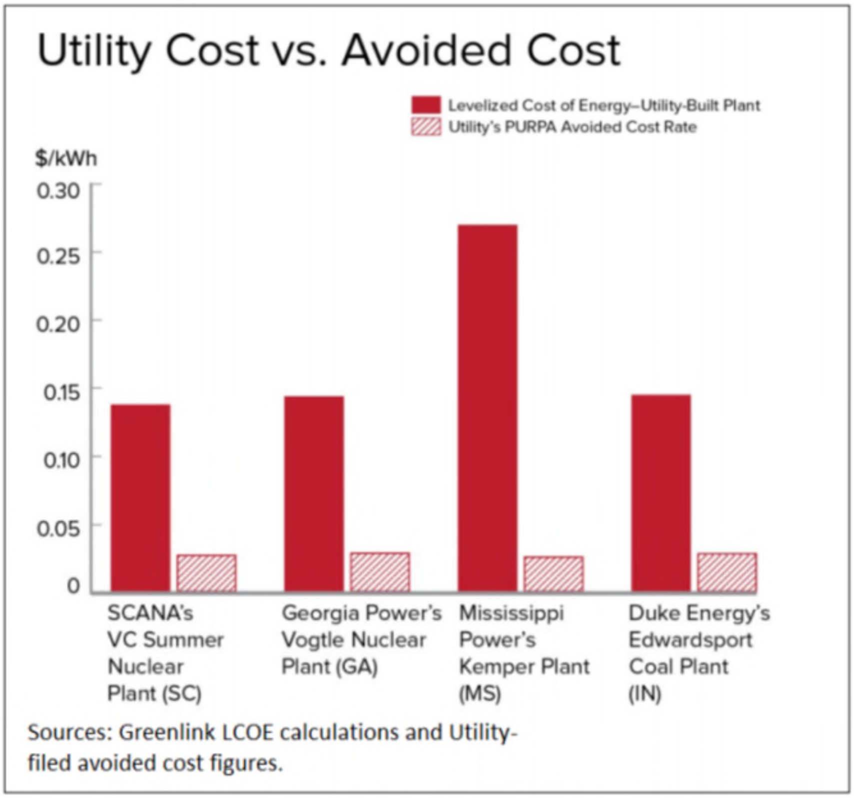
A. No, it is not.

Q. Are electric utilities in South Carolina incentivized to keep avoided cost rates as low as possible?

A. Yes. Small power producers compete directly with utilities for market share. Utilities make a return for shareholders by investing in new generation, pollution control technologies, and grid-related improvements, which results in a capital bias by utilities to spend their own money to meet customer needs. By keeping avoided cost rates artificially low and assigning unreasonable costs to small power producers, utilities can effectively shield themselves from competition to the benefit of shareholders and at the expense of ratepayers.

Fig. 6 below illustrates a sample of recent proposed or constructed utility projects that have resulted in costs significantly above that utility's published avoided cost rates. This inconsistency between a utility's cost to construct new generation versus the price paid to SPPs reflects the uneven playing ground that SPPs are regularly forced to compete on when attempting to displace utility investments that benefit shareholders at the expense of ratepayers.

Fig. 6[8]



Q. Do accurate avoided cost rates promote competition with Duke Energy?

A. Yes, although Duke Energy remains a monopoly utility under South Carolina law, accurately-determined avoided cost rates promote the limited competition envisioned by PURPA because QFs are effectively able to compete with existing utility generation—but only if the QF is able to supply energy at the rate that the utility would otherwise pay to supply that energy itself. QFs are also able to compete with Duke Energy for future generation by receiving avoided capacity payments for utility-owned generation that can be deferred, reduced, or avoided by the purchase of QF capacity. As I discussed above,

[8] FERC Docket No. AD16-16, *Supplemental Comments of the Southern Environmental Law Center and Environmental Law and Policy Center, et al.*, p. 21 (Oct. 17, 2018).

Duke Energy is incentivized to keep avoided cost rates as low as possible, since low avoided cost rates may render QFs economically infeasible, reducing direct competition with the utility. On the other hand, avoided cost methodologies and rates that accurately reflect utilities' actual costs that are passed along to ratepayers incentivize utilities to increase operational efficiencies and make prudent resource decisions. That is why it is critical that the approved avoided cost methodology and the inputs that go into it are accurate and representative of actual short-term and long-term utility costs.

Q. In the testimony filed in these proceedings, does Duke Energy mention shareholder interests, its incentive to keep avoided costs as low as possible, or the impact that small power producers have on the Company's profits?

A. Nowhere does the Company mention shareholder interests, incentives related to lower avoided costs, or the impact additional competition has on Company profits.

IV. PURPA

Q. Please provide a brief overview of Public Utility Regulatory Policies Act of 1978 ("PURPA") as it relates to these proceedings.

A. Similar to Act 62, PURPA was established, in part, to diversify electric generation resources by encouraging energy production from small power producers.[9] Congress intended PURPA to shift a portion of electric generation away from resources built, owned, and rate-based by vertically integrated monopoly electric utilities that often resulted in cost

[9] 16 U.S. Code § 824a-3.

overruns paid by ratepayers.[10] While Act 62 provides a multitude of options for encouraging the development of solar energy resources in South Carolina, including through customer-sited generation, community solar, commercial and industrial clean energy programs and competitive solicitation, PURPA implementation is a substantial component of Act 62, and the avoided cost rates established in this proceeding will likely impact many, if not all, of the other Act 62 renewable energy programs. The entire notion of "avoided cost" is actually derivative of PURPA and now provides the foundation for how policymakers and regulators in states with vertically integrated monopoly utilities think about the value of a kilowatt saved or produced.

Among other goals like energy conservation and efficiency, PURPA was intended to inject limited competition into monopsony energy markets where the only legal opportunity for small power producers to sell electricity is to a monopoly utility. Given that monopolies like Duke Energy are naturally inclined to place shareholder interests over their captive customers, it became incumbent upon Congress to ensure that economically viable clean energy and co-generation resources could be fairly sold for the benefit of captive utility customers and the nation as a whole. Although PURPA is often colored as a holdover from the Arab Oil Embargoes and Congress's efforts to reduce the country's

[10] See, e.g., *FERC v. Mississippi*, 456 U.S. 742, 756 (1982) (recounting PURPA's statutory directives); H.R. Rep. No. 95-1750 at 9 (1978) (Conf. Rep.) (documenting the legislative history and development of PURPA). See also, Richard Munson, From Edison to Enron: The Business of Power and What it Means for the Future of Electricity, 103-107 (2005) (recounting that Senator John Durkin was a proponent of competition in the electric industry and supported by manufacturers that were interested in installing their own generation as a means to "avoid the high costs of utilities' over-budget reactors").

reliance on imported fuels, the reality is that Congress has revisited and amended PURPA on multiple occasions, including within the Energy Policy Act of 2005, which a Republican Congress passed, and President George W. Bush signed into law. Notably, Congress saw fit to leave PURPA intact.

The South Carolina General Assembly had the practical ability to limit PURPA's viability, just as the North Carolina legislature recently did by restricting PURPA contracts to five years and prioritizing competitive procurement of solar through long-term, fixed price contracts.[11] Instead, the South Carolina General Assembly embraced a policy of encouraging renewable energy development through PURPA and established a multitude of new requirements to ensure the fair and equal treatment of SPPs in the setting of rates and contract terms and conditions related to development of solar and storage resources.

Q. How is PURPA implemented at the federal level?

A. PURPA requires FERC to enact regulations to implement the statute. These FERC regulations, located at 18 C.F.R. § 292.101 et seq., establish the regulatory framework for state implementation of PURPA, including setting avoided cost rates, requiring long-term fixed contracts, and standard offer rates, among others. In addition to these regulations, FERC has also issued many orders implementing PURPA since its enactment in 1978. FERC's initial rulemaking order in which it promulgated its PURPA regulations, Order No. 69, is one of the primary sources of FERC's intended implementation of the statute. FERC has also issued many orders over the years interpreting and answering questions

[11] N.C. HB 589 (2017), codified at N.C. Gen. Stat. § 62-110.8.

regarding PURPA implementation in specific cases, which provide additional guidance with respect to those specific issues.

Q. Does Act 62 incorporate these FERC regulations and orders?

A. Yes. As discussed, Section 58-41-20 requires that "any decisions by the commission shall be just and reasonable to the ratepayers of the electrical utility, in the public interest, *consistent with PURPA and the Federal Energy Regulatory Commission's implementing regulations and orders*, and nondiscriminatory to small power producers." (emphasis added).

Q. Does PURPA further the General Assembly's directive to reduce the risk placed on the using and consuming public?

A. Yes. Act 62 was adopted in the aftermath of the V.C. Summer abandonment when legislators had a heightened sensitivity to the inherent risks embedded within the traditional utility business model. The South Carolina General Assembly embraced PURPA as an appropriate vehicle for the deployment of additional clean energy resources in the state. It would be illogical to conclude that the South Carolina General Assembly expected a robust implementation of PURPA to increase, rather than decrease, ratepayer risk.

Q. If the power produced by an SPP does not convey any energy or capacity value to the utility, must the utility still pay for that power?

A. PURPA requires only that a utility pay for the value of energy and capacity that is being avoided by any purchase from a SPP. Avoided cost rates that are set as accurately as possible via credible analysis and rate design will reflect all legitimate changes in energy and capacity value through the biennial avoided cost update proceedings authorized by Act

62. If further energy development were to further drive down energy and capacity costs, SPP project financing would become increasingly challenging, and all project development would cease long before energy and capacity values actually reached zero. Thus, PURPA is self-regulating with respect to SPP project development as long as rates are just and reasonable.

Q. Is there any way for a utility to avoid its "must take" obligation under PURPA?

A. Yes. The Energy Policy Act of 2005, 42 U.S.C. § 13201 et seq. (2005), amended PURPA by adding, among other provisions, Section 210(m). This section allows a utility to apply for a waiver of its mandatory purchase obligation from QFs if it is located in an area where QFs have non-discriminatory access to markets to sell energy and capacity. As implemented by FERC, utilities in all RTOs/ISOs are eligible to receive such a waiver of the obligation to purchase energy and capacity from QFs larger than 20 MW. The policy rationale of Section 210(m) was that if a QF has a meaningful and non-discriminatory opportunity to sell energy and capacity to buyers other than the utility to which the QF is interconnected, then PURPA's must-purchase requirement would no longer be required. In this way PURPA further supports the development of free and efficient marketplaces for energy and capacity, to the benefit of utility ratepayers.

Q. Does this type of non-discriminatory access to markets for energy and capacity exist in South Carolina?

A. Not at present. Under PURPA and FERC's regulations, utilities located outside of RTOs/ISOs are not eligible for a waiver of the mandatory purchase obligation because QFs in those areas have no meaningful opportunity to sell energy and capacity to a buyer other

than the monopsony utility. Congress and FERC have maintained that in jurisdictions like South Carolina, PURPA's requirements remain sound public policy.

Q. Does this conclude your testimony?

A. It does.

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This is to certify that I have caused to be served this day one copy of the:

- Direct Testimony of Jon Downey;
- Direct Testimony of Hamilton Davis;

to the persons named below at the addresses set forth via electronic mail:

Alexander W. Knowles Office of Regulatory Staff Email: aknowles@ors.sc.gov	Andrew M. Bateman Office of Regulatory Staff Email: abateman@ors.sc.gov
Becky Dover SC Department of Consumer Affairs Email: bdover@scconsumer.gov	Carri Grube - Lybarker SC Department of Consumer Affairs Email: clybarker@scconsumer.gov
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